

**IN THE THIRD SESSION OF THE EIGHTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**

**REPORT OF THE
COMMITTEE ON CONSTITUTIONAL, LEGAL AND
PARLIAMNETARY AFFAIRS**

ON THE

**PROMOTION OF PROPOER HUMAN SEXUAL
RIGHTS AND GHANAIAAN FAMILY VALUES BILL,
2021**

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**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND
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HUMAN SEXUAL RIGHTS AND GHANAIAN FAMILY VALUES BILL,
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1.0 INTRODUCTION

1.1 The Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 is a Private Members Bill (PMB) introduced by the following Members of Parliament:

- i. Hon Samuel Nartey George;
- ii. Hon Emmanuel Kwasi Bedzrah;
- iii. Hon Rev John Ntim Forjour;
- iv. Hon Alhassan Sayibu Suhuyini;
- v. Hon Rita Naa Odoley Sowah;
- vi. Hon Helen Adjoa Ntoso; and
- vii. Hon Rockson-Nelson Etse Kwami Dafeamekpor

1.2 Hon Samuel Nartey George, on behalf of the Group, laid the Bill in Parliament, on Monday, 2nd August, 2021.

1.3 The Bill was subsequently referred to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Article 106 of the 1992 Constitution and Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

- 2.1 In line with best practice of law-making, the Committee advertised the Bill in relevant print media and Parliament's website for interested persons to submit memoranda.
- 2.2 The Bill received so much popularity and dominated the media space for some time. An overwhelming Ghanaians, including religious groups, human rights activists, State institutions, traditional authorities, concerned individuals, and United Nations organs with mandate on human rights, submitted memoranda, totalling about two hundred (200).
- 2.3 Recognising the massive public and global interest in the Bill, amidst Ghana's obligation under the international human rights treaties and conventions, the Committee decided to adopt the following three-pronged approach as part of measures to broaden consultation and ensure in-depth consideration:
- i. *Extensive public hearings* to listen to the concerns of Ghanaians and human right activists, including international human right communities as well as persons believed to be in the LGBTQ+ community. Nine (9) public hearings were held.
 - ii. *Study visits* to countries with anti-LGBTQ+ or pro-LGBTQ+ legislations to understand the rationale and specific country moral value underpinnings, vis-à-vis compliance level with International Human Right Treaties.
 - iii. *Clause-by-clause* considerations of the Bill where both the concerns expressed through the public hearings, and the lessons from the study visits were considered in the Committee's proposed

amendments. In all, six Sittings were held by the Committee to consider the Bill.

2.4 The Committee is grateful to all individuals, groups, associations, and organisations who expressed interest in the Bill in diverse ways.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution of Ghana;
- ii. The Standing Orders of the Parliament of Ghana;
- iii. The Criminal Offences Act, 1960 (Act 29);
- iv. Memoranda submitted on the Bill by the general public including international human right communities;
- v. United States Center for Disease Control and Prevention, press release on March, 2010 "*Impact of HIV and Syphilis Among U.S. Gay and Bisexual Men*"; and
- vi. Ganna, A., Verweij, K. J., Nivard, M. G., Maier, R., Wedow, R., Busch, A. S., ... & Zietsch, B. P. (2019). Large-scale GWAS reveals insights into the genetic architecture of same-sex sexual behavior. *Science*, 365(6456), eaat7693.

4.0 BACKGROUND

4.1 On 31st January, 2021, several news media in Ghana reported the opening of an LGBTTQIAAP+ advocacy resource centre in Accra.

4.2 The news was greeted with a plethora of criticism from a cross-section of Ghanaians, with several persons including the National

House of Chiefs, the National Chief Imam, the Christian Council, the Catholic Bishop's Conference and the National Coalition for Proper Human Sexual Rights and Family Values calling for the resource centre to be shut down, and persons involved in the opening of the centre, arrested and prosecuted.

- 4.3 The general dissatisfaction from majority of Ghanaians brought about a renewed national debate on the activities of LGBTTQQIAAP+ persons in Ghana, with some calling for persons involved in such activities to be punished as they do not accord with the sociocultural values of any ethnic group in Ghana.
- 4.4 In response to the concerns and sentiments of the general public towards the opening of an advocacy resource centre by the LGBTTQQIAAP+ community, some Members of Parliament decided to introduce a Private Members Bill.
- 4.5 In the view of the Proponents, the activities of LGBTTQQIAAP+ threatens the concept of family and the associated value systems that are central to the social structure of all ethnic groups in Ghana. They averred that the concept of family for Ghanaians has always been a unit of society initiated by marriage between a man and a woman, each of whose gender is assumed at birth.
- 4.6 The Proponents further argued that the Marriage Act, 1884-1985 (CAP 127) is silent on the required sex of marriage partners. In their explanation, the law could only contemplate marriage as a union between a man and woman, whose sex is determined at birth. However, with the increasing blurring of the concept of male and female as a result of the activities of LGBTTQQIAAP+, the absence of a clear language on the accepted sex of marriage

partners could create challenges for the implementation of CAP 127.

4.7 The Bill therefore seeks to fill the lacuna by enacting specific provisions on the required sex of persons allowed to marry in Ghana.

4.8 The overall purpose of the initiative is to strengthen Ghanaian laws, by removing ambiguities. It is also meant to provide a framework for the promotion of desirable family values and social norms in Ghana.

5.0 OBJECT OF THE BILL

The object of the Bill as contained in the memorandum accompanying the Bill, is to provide for proper human sexual rights and Ghanaian family values; proscribe LGBTQ+ and related activities; proscribe propaganda of, advocacy for or promotion of LGBTTTQQAAP+ and related activities; provide for the protection of and support for children, persons who are victims or accused of LGBTTTQQAAP+ and related activities and other persons; and related matters.

6.0 SUMMARY OF THE PROVISIONS OF THE BILL

6.1 The Bill comprises twenty-five (25) clauses and is divided into seven sections under the following:

- a) *Preliminary Provisions (Clauses 1 to 2)* – contains provisions on the application of the Bill and interpretations.



- b) *Proper Human Sexual Rights and Ghanaian Family Values (Clauses 3 to 5)* – deals with imposition of duty to promote proper human sexual rights and Ghanaian family values, prohibitions against undermining proper sexual human rights and Ghanaian family values and duty to report.
- c) *LGBTTQQIAAP+ and Related Activities (Clauses 6 to 11)* – concerned about the prohibition of LGBTTQQIAAP+ and related activities, procurement, detention with intent to commit prohibited sexual activity, keeping a brothel for prohibited sexual activity, prohibition of gross indecency, and void marriage.
- d) *LGBTTQQIAAP+ Propaganda, Advocacy, Support and other Promotional Activities (Clauses 12 to 16)* deals with the prohibition of propaganda of, promotion of and advocacy for activities prohibited under this act, prohibition of propaganda of, promotion of and advocacy for activities directed at a child, prohibition of funding or sponsorship for prohibited activities, disbandment of LGBTTQQIAAP + group, society, association, club or organisation, and prohibition of LGBTTQQIAAP+ group, society, association, club, or organisation.
- e) *Protection and Support for Children (Clauses 17 to 18)* contains provisions for the prohibition of adoption order for LGBTTQQIAAP+ persons, prohibition of grant of fosterage for LGBTTQQIAAP+ persons.
- f) *Protection and Support for Victims, Accused and Other Persons (Clauses 19 to 23)*- provides for the protection of victims of prohibited sexual activities, access to medical help or treatment by accused, flexible sentencing, prohibition of extra judicial treatment, and assistance for questioning and intersex persons.

- g) *Miscellaneous Provisions (Clauses 24 to 25)* - deals with regulations and consequential amendments.

7.0 OBSERVATIONS

7.1 Concerns about imposition of a charge on the Consolidated Fund

7.1.1 Preliminary concerns were expressed by some concerned Ghanaians, and same was expressed by the Attorney-General and Minister for Justice, in relation to aspects of the Bill which appear to impose a charge on the Consolidated Fund, in contravention with Article 108 of the 1992 Constitution. The relevant clauses of the said Article of the Constitution read as follows:

“Parliament shall not, unless the bill is introduced or the motion is introduced by, or on behalf of, the President

(a) proceed upon a bill including an amendment to a bill, that, in the opinion of the person presiding, makes provision for any of the following

(ii) imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reducing; or

(iii) the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal; or

(b) proceed upon a motion, including an amendment to a motion, the effect of which, in the opinion of the person presiding, would be to

make provision for any of the purposes specified in paragraph (a) of this article”

7.1.2 The Committee noted that the following provisions in the Bill are likely to impose a charge on the Consolidated Fund, in contravention to the provisions of Article 108 of the 1992 Constitution:

- (a) the collective responsibility being placed on citizens, educational institutions, the Executive, the Legislature, and the Judiciary to promote the values enshrined in the Bill, under clause 3 of the Bill;
- (b) the payment for medical assistance or therapy by an approved service provider under sub-clause (6) of clause 19, clause 20 and clause 23 of the Bill.

7.1.3 The Committee wishes to indicate that the concerns of the Attorney-General have been taken care of in the Committee’s proposed amendments.

7.2 Short title of the Bill

The Committee noted that the use of the word “*proper*” in the short title raises some subjectivity. The use of “*Ghanaian*” in the short title of the Bill was also found to be superfluous because, a Bill passed in Ghana relates to Ghana, and applies to all persons in Ghana unless a contrary intention is expressed. The Committee accordingly agreed with the Sponsors of the Bill to amend the short title of the Bill to read as follows:

“Human Sexual Rights and Family Values Bill, 2021”.

7.3 Long title of the Bill

Following the amendment of the short title, the long title of the Bill is accordingly amended to read as follows:

“AN ACT to provide for human sexual rights and family values and related matters”.

7.4 Prohibition of Unnatural carnal knowledge

The Committee noted that unnatural carnal knowledge is defined by section 104(2) of Act 29 as *“sexual intercourse with a person in an unnatural manner, or with an animal”*. It was, however, observed that not all forms of unnatural carnal knowledge or sexual intercourse between persons of the same sex have been criminalised by the current Ghana law. This is because, **section 99 of Act 29 on “Evidence of carnal knowledge”** prescribes for evidence of carnal knowledge to be *“complete on proof of the least degree of penetration.”* Therefore the current law appears to be discriminatory towards males because sexual intercourse or unnatural carnal knowledge between or among persons of the female sex, for instance, appears not to be contemplated by Act 29, therefore, not criminalised under Act 29. Accordingly, the Bill seeks to state a broader prohibition on unnatural carnal knowledge or sexual intercourse between persons of the same sex in general.

7.5 Argument raised in favour of the passage of the Bill

7.5.1 The three most dominant religious groups in Ghana namely, Christians, Islam and Traditionalists as well as some other individuals have argued strongly in favour of the passage of the

Bill. They explained that the Bill seeks to protect the pristine Ghanaian norms and value systems.

7.5.2 According to them, the Bill is a bold attempt to consolidate the constitutional and legislative framework of Ghana. Although, Section 104 of Act 29 criminalises unnatural carnal knowledge, in their view, there are some *lacunae* which this Bill seeks to address.

7.5.3 They intimate that the Bill forms part of the efforts at operationalising Article 28 (1) (d) and (e), and Article 39(1) and (2) of the 1992 Constitution which provides for the protection of children against moral hazards. It also recognises family as the basic unit of the society; and enjoins the State to take steps to encourage the integration of appropriate customary values into the fabric of national life.

7.5.4 They cited the 2014 afro-barometer survey conducted by Centre for Democratic Development (CDD) to substantiate their argument. In the said survey, 86% of Ghanaians supported attempt by Parliament to legislate against same-sex marriage, while 11% disapprove. They opined that the polls reflect the will of the people and that Parliament as a representation of the people, must act in accordance of the Constitution, particularly, article 1 which states that “The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised”. Consequently, Parliament is obligated to uphold the sovereign will of the people.

7.5.5 They further intimate that the Bill seeks to consolidate and strengthen the efforts at safeguarding the institution of marriage. In their view, the system of marriage is for biological males to marry biological females, and for the two to bring up their

children. They argue further that LGBTQ+ activities are not only an affront to the socio-cultural values of Ghana, but also threatens the very existence of society.

7.5.6 They dispute the claim that sexual orientation preferences are genetic; explaining that literature does not support such assertion. They explained that according to literature, all tested genetic variants accounted for only 8 to 25% of variation in same-sex sexual behaviour, meaning that significant proportion of 75% of sexual behaviour is accounted for by cultural and environmental factors. Therefore, in their view the decision to be gay or lesbian or bisexual is a choice; with no justifiable reference to genetics. A study conducted by Ganna *et al*, 2019, *Investigating Genomes* was cited to support their position.

7.5.7 Further argument canvassed in support of the Bill was the health implication of LGBTQ+ activities. A study conducted by U.S. Centre for Disease Control in 2018 was cited to buttress their assertion. According to the survey, over 65% of HIV infection among adults and adolescents was attributed to male-to-male sexual contact in United States (Centers for Disease Control and Prevention. *HIV Surveillance Report, 2018*).

In the national context, data from the Ghana AIDS Commission show that, in 2017, there were 54,759 men who had sex with men, living in Ghana. Out of this number, 9,857 representing 18.1 per cent were found to live with HIV. According to the Commission, although the number represents only 2% of the HIV population in the country, the 18% prevalence rate is enough for disease to grow exponentially.

7.6 Argument raised against the passage of the Bill

7.6.1 On the other hand, some other institutions, groups and individuals, including Human Rights Coalition, Ghana AIDS Commission, Commission on Human Rights and Administrative Justice, Key Watch Ghana/Intersex Ghana, among others, are opposed to the passage of the Bill. They advance the following arguments in support of their position:

7.6.2 They contend that the passage of the Bill into law will violate the provisions of Article 1, clauses 1 and 2 of the 1992 Constitution. The said articles place obligation on the Government to exercise its functions according to the dictates of the Constitution, and that any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency be void. They premised their position on the provisions in Articles 12(2), 17(1) and 21(a), (b) and (e), of the Constitution which guarantee equality before the law, prohibit all forms of discrimination and the freedom of expression, thought, conscience, belief, and association as well as media and academic freedom. According to the group, these are unfettered and inalienable rights. Therefore, any attempt to criminalise such acts will be unconstitutional.

7.6.3 The group further stressed that the Constitution prohibits dehumanising and injurious acts to the physical and mental well-being of all persons; guarantees the right of the people to assemble, including the right to take part in processions and demonstrations; and entitled all persons to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion. They concede that the enjoyment of those rights are subject to the rights and freedoms of others, or public interest. However, in their view, the activities of LGBTQ+ do not place any

obstacle to others for enjoying their rights under the Constitution; neither do they pose any harm to the public.

7.6.4 They contend further that LGBTQ+ activities forms part of what the Constitution contemplate under article 33(5) about recognition of certain rights and freedoms which are considered to be inherent in a democracy and which is intended to secure the rights and freedoms and dignity of the people. Consequently, any attempt to prescribe different treatment to different people on the basis of their sexual orientation and gender, will be discriminatory and an affront to article 17 (1) and (2) of the Constitution.

7.6.5 They maintain that any attempt to criminalise intercourse between same sex persons will be a violation of articles 14(1) and 17(1)(2)(3) of the Constitution that provides for personal liberty of all persons and for equality of all persons under the law. They explained that human beings do not engage in sexual acts in open places other than in the privacy of their homes. Therefore, any attempt to promote a situation whereby people's homes can become the subject of invasions merely in search of persons deemed to be engaging in same-sex activities is unjustified interference of their personal liberty.

7.6.6 Another argument proffered against the passage of the Bill is its purported violations of Article 40 of the 1992 Constitution relating to obligations of Ghana to respect international treaties and conventions to which Ghana is a member. Among some of the treaties mentioned included, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights,

Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of Persons with Disability. They argue that under Universal Declaration of Human Rights, all human beings are entitled to their rights and freedoms without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. They also have the right to freedom of peaceful assembly and association. They intimates that criminalising consensual adults for engaging in sexual relations and same-sex is an infringement on their fundamental rights and freedoms. Additionally, criminalising LGBTQ+ activities will be in contravention of UN Resolution A/HRC/29/23 under which Ghana is obligated to respect the right of opinion and expression of all persons; recognises and promote peaceful association and assembly; and avoid discrimination based on sexual orientation and gender identity.

7.6.7 Some institutions and individual also cautioned potential threat of the passage of the Bill to the diplomatic, bilateral and multilateral relations of Ghana with other countries. Specifically, they are of the view that Ghana trade relations with some countries in Europe may be affected. Ghana AIDS Commission also indicated the potential negative impacts of the passage of the Bill on national health outcomes, particularly efforts at eliminating HIV and AIDS.

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7.7 Lessons learned from other countries

7.7.1 In recognition of the high public interest, coupled with the criticisms of international human right communities on the Bill, the Committee decided to embark on a study visit to selected countries to understudy their experiences following the passage of LGBTQ+ related legislations. The Committee settled on France and Hungary based on the divergence of their LGBTQ+ related legislations despite being members of the European Union. The specific objectives of the study visit included the following:

- i. To learn the accepted socio-cultural proper sexual human rights in the selected countries;
- ii. To explore any evidence of health implications of LGBTQ+ activities;
- iii. To appreciate the potential challenges of bilateral and multilateral relations facing countries that have promulgated anti LGBTQ+ Legislations; and
- iv. To have knowledge of the nature and form of legal frameworks relating to LGBTQ+ activities in the selected countries.

7.7.2 At the of the study visit the Committee made the following observations:

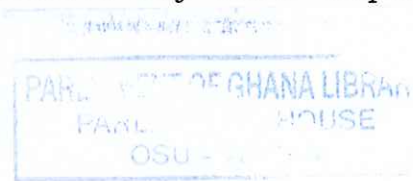
- (a) Hungary anti-LGBTQ+ legislation is targeted at children below 18 years; adults are allowed to engage in same sex relationship, but formal union in the form of marriage between same-sex persons is not allowed. The key elements in the Legislation are the prohibition of all forms of advertising, publication, and public education, which purports to propagates or portray divergence from self-identity corresponding to sex at birth, sex change or

homosexuality among children below 18 years. It also prohibits same-sex couples from child adoption. Under the legislation, parents have the sole right and responsibility for the emotional, physical and spiritual development of the child. The policy rationale of the Legislation is that certain content may confuse the developing moral values of children.

- (b) Hungary has signed unto the United Nations Convention on the Rights of the Child (UNCRC), Universal Declaration of Human Rights, EU Charters on human rights, and other international human right treaties and conventions. The above notwithstanding, Hungary holds the view that wholesale acceptance of what is acclaimed as universal declaration of human rights, and the promotion of same, posed potential threat to the fabrics of its socio-cultural values founded on the belief in God, the family and the people. Accordingly, Hungary enacted anti-LGBTQ+ legislation to protect its children and cultural values. In the view of Hungary, none of the treaties prevents any country from protecting its children and cultural values.
- (c) There were evidence of economic sanctions from European Union, and some other development partners following the passage of the Child Protection Act by Hungary, because it is regarded as discriminatory and anti-LGBTQ+.
- (d) On the other hand, France holds the view that Universal Declaration on Human Rights is about promotion of the rights of all manner of people and human dignity, including persons in the LGBTQ community. Accordingly, all forms of discrimination and

violence against any person or group of persons, including LGBTQ+ people is regarded as inappropriate.

- (e) France further believes that the respect for human rights is an integral part of democracy and inclusive society which are cardinal to building a strong nation. Moreover, every human being is a child of God, and therefore, no one should be discriminated against based on their sexual orientation preferences.
- (f) Additionally, France does not disregard the need to protect children, but holds the view that the opinion and preferences of the child, including the decision to develop interest in LGBTQ+ activities, must also be respected.
- (g) Despite the legalisation of LGBTQ+ activities including same sex marriage in France for more than 10 years ago, LGBTQ+ persons are still stigmatised, signifying lack of full acceptance and recognition.
- (h) The Committee could not have information regarding possible negative implications of LGBTQ+ activities on demography, or health, because France was yet to conduct any such impact analysis.



8.0 CONCLUSIONS AND RECOMMENDATIONS

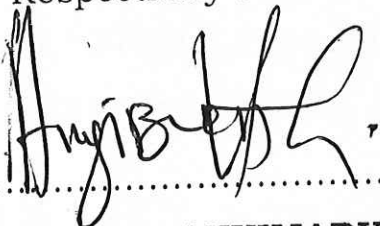
8.1 The Committee noted that majority of Ghanaians were in favour of the passage of the Bill. However, there are significant human right concerns which are worthy of consideration. Pursuant to Article 12(1) of the Constitution, all organs of the State, including the Executive, Judiciary and Parliament have a constitutional

duty to respect and uphold the fundamental human rights enshrined under the 1992 Constitution.

8.2 In light of the above constitutional imperatives, the Committee decided to seek the opinion of the Attorney-General and Minister of Justice on the Bill. The Attorney-General's concerns were duly considered.

8.2 The Committee, accordingly recommends to the House to adopt its Report, and pass into law, the Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021, subject to the amendments proffered by the Committee, attached as appendix A.

Respectfully submitted.



.....
HON KWAME ANYIMADU-ANTWI
(CHAIRMAN, COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS)



.....
AKUA DUROWAA OWUSU-AGYEKUM^f (MRS)
(HEAD, LEGAL COMMITTEES CLUSTER)

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